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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181621
Party	Plaintiff StonCor Group, Inc.
Correspondence Address	CHARLES N QUINN Fox Rothschild LLP 2000 MARKET STREET, 10TH FLOOR PHILADELPHIA, PA 19103-3291 UNITED STATES cquinn@frof.com, dmcgregor@frof.com, bpalmerchuck@frof.com
Submission	Other Motions/Papers
Filer's Name	Charles N. Quinn
Filer's e-mail	cquinn@foxrothschild.com, dmcgregor@foxrothschild.com, cbeebe@foxrothschild.com
Signature	/CHARLES N. QUINN/
Date	05/15/2009
Attachments	Request for Reconsideration - 91181621.pdf ( 20 pages )(191546 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91181621
v.	:	
	:	Ser. No. 76/650,832
Les Pierres Stonedge Inc.,	:	
	:	
Applicant.	:	

**STONCOR’S MOTION FOR RECONSIDERATION OF THE PORTION OF THE  
BOARD’S 15 APRIL 2009 DECISION DENYING STONCOR’S MOTION TO REOPEN  
THE PERIOD FOR STONCOR’S TESTIMONY-IN-CHIEF**

**I. INTRODUCTION**

This is a motion by StonCor Group, Inc. (“StonCor”) for reconsideration of the portion of the 15 April 2009 decision by the Board denying StonCor’s 30 January motion to re-open the period for StonCor’s testimony. Reconsideration is sought in light of the Board’s error (i) in failing to appreciate that Les Pierres had refused StonCor’s request for rescheduling of StonCor’s testimony prior to the start of StonCor’s testimony period; and, then (ii) assuming that StonCor could have filed a consented extension request using ESTTA, when a written motion, brief and supporting declaration were necessary to seek any extension of StonCor’s testimony period, based on StonCor’s counsel’s illness. This error was compounded by the Board erroneously equating physical and mental acts involved in the electronic signing of procedural and proforma papers filed using TEAS or ESTTA, to the physical endurance and mental thought, logic and analysis required in the preparation and filing of a contested motion and supporting declaration seeking to extend a period for taking testimony, or to prepare for and take deposition testimony.

Reconsideration is further sought in light of the Board’s error in inferring from the record

facts regarding some non-existent docketing error, which is completely unsupported by the evidence.

## **II. BACKGROUND**

This trademark opposition proceeding was instituted on 20 December 2007, when StonCor filed a notice of opposition against registration of the mark “STONEDGE” pursuant to application serial number 76/650,832, owned by Les Pierres Stonedge, Inc.(“Les Pierres”). Discovery closed on 8 October 2008.

On 18 November 2008, StonCor requested Les Pierres to consent to a short extension of the discovery period with consequent rescheduling Ston-Cor’s testimony period to commence on 1 February 2009. Les Pierres refused, stating that “at most, we could consider stipulating to a motion to extend your client’s testimony period *if, and only if*, your witness is unavailable for a deposition due to the year end holidays. However, *we will not even entertain stipulating to such a motion until late December...*”<sup>1</sup>

StonCor’s period for testimony-in-chief opened 7 December 2008, and closed on 6 January 2009. StonCor did not take testimony during that period due to the illness of StonCor’s counsel, which is well documented in StonCor’s 30 January motion, papers and StonCor’s 2 March, 2009 papers, replying to Les Pierres’ opposition.

On 22 January and 23 January 2009, Les Pierres filed successive motions contending that StonCor had failed to prove its case, with StonCor then opposing those motions. StonCor also moved on 30 January 2009 to reopen StonCor’s period for StonCor’s testimony-in-chief, on the basis that StonCor’s principal counsel had been very ill during StonCor’s December-January period for taking its testimony-in-chief, and there was no other attorney available and qualified in StonCor’s counsel’s firm who would be able to learn the case and to prepare for and to take

the deposition of StonCor's principal witness in a timely fashion.

Les Pierres opposed StonCor's motion, noting that StonCor's counsel had, on those days that he had been able to come to work while ill, used ESTTA to file a few electronic requests for extensions of time to oppose trademark applications and had electronically signed certain TEAS and ESTTA documents that were prepared and filed by a paralegal in StonCor's counsel's office. On that basis Les Pierres asserted that StonCor's counsel had been physically able to take StonCor's deposition testimony-in-chief during StonCor's testimony period.

StonCor replied to those contentions, noting that StonCor's counsel, on the few days that he could come to work, did not spend any significant time in the office on any of those days, and that the TEAS and ESTTA papers StonCor's counsel signed electronically had largely been prepared by StonCor's counsel's paralegal, or were papers requiring only the most cursory review prior to StonCor's counsel applying his electronic signature and the document being electronically transmitted to the United States Patent and Trademark Office.

On 15 April 2009, this Board denied StonCor's Motion to Reopen StonCor's Testimony, noting that under StonCor's counsel's direction "motions to extend were filed under his signature in other cases and there is nothing in the declarations providing a reason as to why this case is any different from the others he was seeking extensions for. The Board further stated that "[t]o the extent that this case involved a docketing error, we note that docketing errors and breakdowns do constitute excusable neglect."

StonCor now seeks reconsideration of that decision.

### **III     LEGAL STANDARD**

The Board's fact findings must be supported by substantial evidence.<sup>2</sup>

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<sup>1</sup> Page 1, lines 5-9; Exhibit "A" to Les Pierres' Opposition to StonCor's Motion to Re-open

<sup>2</sup> *On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080 (Fed. Cir. 2000)

#### IV ARGUMENT

**1. NOT REALIZING LES PIERRES HAD REFUSED STONCOR'S REQUEST TO RESCHEDULE ITS TESTIMONY PERIOD, THE BOARD ERRED IN EQUATING THE MINIMAL EFFORT INVOLVED IN ELECTRONICALLY FILING A *CONSENTED* TIME EXTENSION MOTION USING ESTTA WITH THE TIME AND EFFORT REQUIRED FOR PREPARING A *CONTESTED* MOTION, BRIEF, AND SUPPORTING DECLARATION SEEKING TO EXTEND TIME FOR TESTIMONY BY REASON OF COUNSEL'S ILLNESS**

When the Board stated that opposer's failure to submit evidence was wholly within counsel's control in light of his ability to file or have filed extensions in other proceedings, the Board was implicitly assuming that StonCor's counsel could have filed an uncontested motion using the ESTTA system to extend the time for StonCor's testimony. This was an error by the Board; the Board's assumption was incorrect. Less than three weeks earlier, Les Pierres had refused StonCor's request to reschedule StonCor's testimony, stating clearly and in no uncertain terms that "at most, we would consider stipulating to a motion to extend your client's testimony *if, and only if*, your witness is unavailable for a deposition due to the year end holidays. However, *we will not even* entertain stipulating to *such a motion until late December...*"<sup>3</sup>

This convinced StonCor's counsel that it would be futile to re-approach Les Pierres seeking any time extension, in light of Les Pierres uncooperative recent refusal and Les Pierres' rigid and uncooperative positions taken earlier in the proceeding<sup>4</sup>.

The ESTTA system does not include any menu driven, template oriented program for filing of contested motions. In order to file a contested motion using the ESTTA system, one must prepare one's motion, supporting brief, and any other supporting evidentiary material, such as declarations, using word processing equipment. Those documents must then be converted into PDF form, and filed on a file by file basis, which are accepted by a program that is

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<sup>3</sup> Page 1, lines 5-9; Exhibit "A" to Les Pierres' Opposition to StonCor's Motion to Re-open

somewhat of an adjunct to the ESTTA system<sup>5</sup>.

The Board erred in equating the minimal effort involved in electronic signings and filings using the United States Patent and Trademark Office's menu driven, template oriented TEAS and ESTTA systems with the time and effort required in preparing a contested motion and supporting declaration to extend time for testimony by reason of counsel's illness, or with the time and effort required to prepare for and attend StonCor's testimonial deposition in support of StonCor's case-in-chief.

The Board stated, in part, in its decision that "opposer's failure to submit evidence was wholly within counsel's control in light of his ability to file or have filed extensions in other proceedings." Presumably, the Board is familiar with the ease with which one may file a request for an extension of time to oppose a published mark using the ESTTA software. Similarly, the Board is presumably familiar with the ease with which one may file an intent to use trademark registration application using the TEAS software. Both the TEAS and ESTTA systems are menu driven, template oriented systems in which once the user selects a particular filing the user desires to make, a series of templates driven by a menu appear. For each template, the user provides the required input information by striking a few keys on the keyboard, and clicking on "Next" to go to the next successive template. When finished, the user applies the user's electronic signature, clicks to pay any appropriate fee that may be required, and closes out of the last template for the chosen procedure.

When the Board stated that StonCor's counsel's failure to submit evidence was wholly within StonCor's counsel's control in light of his ability to file or have filed extensions in other proceedings, the Board implicitly, but wrongly, assumed that StonCor's counsel could have used

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<sup>4</sup> ¶ 3, Quinn Declaration in Support of StonCor's Motion for Reconsideration.

<sup>5</sup> ¶ 6 through 8, Quinn Declaration in Support of StonCor's Motion for Reconsideration

the ESTTA system to submit a consented time extension, which would have been granted. What the Board did not realize is, as evidenced by Les Pierres' Exhibit "A", attached to Les Pierres' opposition to StonCor's motion to re-open, StonCor's counsel had already requested consent to an extension, and had been rebuffed. Les Pierres' counsel flatly refused the request, saying that "at most, we would consider stipulating to a motion to extend your client's testimony period **if, and only if** (emphasis supplied), your witness is unavailable for deposition due to the year end holidays. However, we will not even entertain stipulating to such a motion until late December<sup>6</sup>."

Given this previous statement by Les Pierres' counsel, it was clear to StonCor's counsel that any request to Les Pierres for an extension of time, or to reschedule StonCor's testimony period would be pointless. As a result, to extend or reschedule StonCor's testimony period, a detailed written motion, and one or more supporting declarations would have been required. These papers would require time and effort to prepare, much more effort than the minimal effort required when electronically signing and filing papers using the ESTTA system.

As is clear from Exhibit "1" (which is merely a summary of Les Pierres' Exhibits C through R) as attached to this motion, the period over which TEAS and ESTTA filings were made pursuant to StonCor's counsel's direction, or in a few cases, by StonCor's counsel himself, covered a period of nineteen (19) days, from the 10<sup>th</sup> of December through the 29<sup>th</sup> of December, 2008. The Board will surely recognize that the time involved for those filings, and the effort involved for those filings on those separate days, was not significant, especially when compared to the effort required to prepare and file a well-written, persuasive motion, brief and supporting declaration, of the type that would be required in seeking a contested time extension for the taking of StonCor's testimony.

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<sup>6</sup> Page 1, lines 5-9; Exhibit "A" to Les Pierres' Opposition to StonCor's Motion to Re-open

To write a persuasive brief that will be carefully considered by this Board, issues must be defined, drafted and revised. An outline should be prepared. Once the outline is prepared, a draft of the brief must be written. That draft must usually then be rewritten, perhaps several times; paragraphs reversed, added or discarded; and sentences reworked for clarity. Order and organization must be evaluated continuously during the reworking, rewriting, editing and proofing of the draft brief. Footnotes and any citations must be checked, as well as punctuation. Only when all of these tasks have been performed is the brief arguably ready to be presented to a colleague for evaluation prior to filing, or filed if time is of the essence.

For the Board to equate the effort involved in the electronic signing and filing by StonCor's counsel on a few different days, using the TEAS and ESTTA systems, with the time and effort required to prepare a *contested* motion and brief, and at least one supporting declaration, to extend the time for testimony when counsel was quite ill, is not a fair nor an accurate equation. The things on either side of the equal sign simply are not the same and are not the equals of each other. The time and effort involved in TEAS and ESTTA filings is minimal. The time required to prepare a suitable motion, brief, and supporting declaration is not minimal, it is substantial. Significant mental effort and concentration are required. To equate this to an ESTTA filing, and to say that a person who is seriously ill, or who was recovering from a serious illness, could prepare a suitable contested motion, brief and supporting declaration, or, even worse, could have prepared for and taken the testimonial deposition of StonCor's principal witness, is not supported by substantial evidence and is just plain wrong.

**2. THE BOARD ERRED BY INFERRING FROM THE RECORD A  
“DOCKETING ERROR” WHEN THERE IS NO EVIDENCE OF ANY  
“DOCKETING ERROR” IN THE RECORD, AND NEITHER PARTY  
ARGUED REGARDING ANY DOCKETING ERROR**

StonCor respectfully submits that the Board erred by implicitly reading into or from the



record something, presumably facts, concerning some putative “docketing error”, as that term appears in the Board’s decision, when there is no evidence of any “docketing error” in the record, and neither parties’ papers argued regarding any such “docketing error”.

A review of all of the evidence of record clearly indicates that this case does not involve any docketing error. There simply is not any evidence of any “docketing error”. The words “docket” and “docketing” are not present in StonCor’s motion to re-open; nor in StonCor’s counsel’s declaration supporting StonCor’s motion to re-open; nor in StonCor’s reply to Les Pierres’ opposition to StonCor’s motion; nor in StonCor’s counsel’s declaration support StonCor’s reply; and appear only once in StonCor’s counsel’s paralegal’s declaration supporting StonCor’s reply. The single occurrence of the word “docket” in StonCor’s paralegal Ms. McGregor’s declaration appears in paragraph 9 on page 4 of that declaration. The context is that of Ms. McGregor’s discussion of her conversation with a client as to whether a mark, the subject of trademark application serial number 78/568,858, was in use. She needed that information to know whether the appropriate paper to file was a statement of use respecting that mark, or a first request for an extension of time to file a statement of use for that mark, in order to file the correct paper to maintain the trademark application in a pending status.

As set forth in more detail in StonCor’s counsel’s accompanying declaration<sup>7</sup>, the StonCor papers have been scanned, using StonCor’s counsel’s word processing equipment, to verify that there is no such appearance of the word “docket” or the word “docketing”, nor any synonym for either of those two words, in any of StonCor’s moving papers, or in the supporting declarations, with the exception of the single occurrence in Ms. McGregor’s declaration noted above. That occurrence has no relevance to any issue involved in this motion.

It is also the case, and the evidence shows, that Les Pierres does not contend this is a case

involving docketing error. Les Pierres does not assert that there was a docketing error. To the contrary, Les Pierres states that StonCor's counsel and StonCor's counsel's staff, "were fully aware of the opening and closing of StonCor's testimony period<sup>8</sup>."

Even though there is an absence of evidence in the record respecting any "docketing error", there are errors addressed above and here – another error was by the Board in reading into the record something (the opinion is not clear) from which the Board inferred a non-existent docketing error. This is reversible error, since there is no evidence in the record, let alone any substantial evidence in the record, to support the Board's statement or finding concerning a docketing error. Since substantial evidence is required to support the Board's findings, this evidentiary deficiency is enough for the Board to reconsider and reverse its decision, to the extent that decision rests upon the finding of any docketing error. At the very least, clarification of the Board's decision on this "docketing error" issue is in order in the event an appeal might be taken.

## **V PRAYER FOR RELIEF**

StonCor respectfully request that the Board reconsider the portion of its decision of 15 April denying StonCor's motion of 30 January 2009 and order that StonCor's period for testimony be reopened.

To the extent there is any fee required in connection with the receipt, acceptance and/or

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<sup>7</sup> ¶ 9 through 11, Quinn Declaration in Support of StonCor's Motion for Reconsideration

<sup>8</sup> Page 2, lines 5-7; Les Pierres' Opposition to StonCor's Motion to Re-open.

consideration of this Motion, the attached declaration and/or any other accompanying papers submitted herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Date: 5/15/09

/CHARLES N. QUINN/  
CHARLES N. QUINN  
Attorney for Opposer  
Fox Rothschild LLP  
747 Constitution Drive, Suite 100  
Exton, PA., 19341-0673  
Tel: 610-4584984  
Fax: 610-458-7337  
email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.

Opposer

v.

Les Pierres Stonedged, Inc.

Applicant

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Opposition: 91181621

Application: 76/650,832

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
747 Constitution Drive, Suite 100  
Exton, Pa., 19341-0673  
610-4580-4984  
610-458-7337 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF CHARLES N. QUINN IN SUPPORT OF  
STONCOR'S MOTION FOR RECONSIDERATION OF THE PORTION OF THE  
BOARD'S 15 APRIL 2009 DECISION DENYING STONCOR'S MOTION TO REOPEN  
THE PERIOD FOR STONCOR'S TESTIMONY-IN-CHIEF**

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at Eagleview Corporate Center, 747 Constitution Drive, Suite 100, Exton, Pennsylvania, 19341-0673, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. I have practiced intellectual property law exclusively since graduating from Villanova University School of Law and being admitted in the Pennsylvania Bar on 3 October 1973. I was admitted to practice in patent matters before the United States Patent and Trademark Office in the Spring of 1974.

3. Before I was taken ill, I had requested Les Pierres' counsel to agree to reset the dates, by extending discovery for five weeks with StonCor's testimony period not commencing until the first of February. Les Pierres' counsel refused that request, saying "At most we would consider stipulating to a motion to extend your client's testimony period *if, and only if*, your witness is unavailable for a deposition due to the year-end holidays. However, we *will not even entertain* stipulating to such a motion until late-December ..."<sup>1</sup>. Given this earlier uncooperative statement by Les Pierres' counsel, which was consistent with Les Pierres' counsel's rigid and uncooperative positions throughout this proceeding, I was convinced we would not receive Les Pierres' consent to extend or reschedule StonCor's testimony period. Consequently, to extend or reschedule StonCor's testimony period, a detailed written motion, brief, and one or more detailed supporting declarations would have been required.

4. Preparing a persuasive brief requires defining the issues; drafting them and revising those drafts; preparing an outline for the brief; developing an initial draft of the brief; rewriting the brief, including revising paragraphs, writing new paragraphs, and discarding paragraphs that are no longer useful; reworking sentences for clarity, checking footnotes and any citations; and checking punctuation, prior to having a colleague review and critique the brief or filing and serving it if time is short. Due to my illness, I was not even remotely physically capable tackling those tasks and preparing such briefing papers during StonCor's testimony

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<sup>1</sup> Pg. 1, lines 5-7; Exhibit A to Les Pierres' Opposition to StonCor's Motion to Re-open

period, as detailed in my declarations submitted in support of StonCor's 30 January motion and 2 March reply.

5. Attached hereto as Exhibit "1" is a chart summarizing the exhibits, namely Exhibits "C" through "R", that were attached to Les Pierres' opposition to StonCor's motion to re-open the period for testimony. Those Les Pierres exhibits, as summarized on attached Exhibit "1", constituted four (4) electronically filed trademark applications (Les Pierres' Exhibits "F", "G", "K" and "L"); four (4) electronically filed requests for extensions of time to oppose published trademarks (Les Pierres' Exhibits "H", "M", "N" and "P"); three (3) electronically filed requests for extensions of time to file statements of use (Les Pierres' Exhibits "D", "I", and "J"), one (1) electronically filed Statement of Use (Les Pierres' Exhibit "O"); and one (1) electronically filed consented motion for an extension of time regarding discovery in opposition 91182745 (Les Pierres' Exhibit "C"). All of these thirteen exhibits were filed using either the United States Patent and Trademark Office Trademark Electronic Application System (TEAS), or the United States Patent and Trademark Office Electronic System for Trademark Trials and Appeals (ESTTA).

6. Both TEAS and ESTTA are menu driven, template oriented systems in which, once a user selects the particular filing the user desires to make, a series of templates driven by a menu appear. For each template, the user provides the required input information by striking a few keys on one's keyboard and clicking on "Next" to go to the following template. When the user is finished, the user applies the user's electronic signature, clicks to pay the appropriate fee (if a fee is required), and closes out of the last template for the chosen procedure on either the TEAS or ESTTA system. When using either TEAS or ESTTA, for any of the filings represented by Les Pierres' Exhibits "C", "D", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O" and "P",

there is nothing that approaches or requires any physical effort or any significant mental effort. Even a seriously ill person, as I was during the period of interest, can make these filings with minimal physical effort and, in most cases, with little thought being required. In the cases where some other person, such as intellectual property paralegal Ms. McGregor, prepared the particular electronic filing, all that is required is for the attorney of record, in this case me, to apply my electronic signature to the document that had been prepared pursuant to my direction. The amount of physical and mental effort required to apply my electronic signature is minimal.

7. The only ones of Les Pierres' exhibits not falling into the category of menu driven template filings using either TEAS or ESTTA, are Les Pierres' Exhibit "E", which was an electronically filed stipulation motion to extend time filed *by another opposing counsel* in opposition number 911820060, based on consent that Ms. McGregor provided after a telephone consultation with our client in that matter, and a reply brief electronically filed after StonCor's period for testimony closed, with a subsequent filing the following day memorializing electronic difficulties encountered in the reply brief filing the previous evening. Both of these last two exhibits, Les Pierres' Exhibits "Q" and "R", involved activity after the close of StonCor's testimony period, at a time when I was feeling somewhat better, although I still had certainly not recovered fully from the illness.

8. As respecting any request for extension of StonCor's testimony period that might have been filed during the period for testimony, there is a menu driven, template oriented option in the ESTTA system for filing a ***consented*** motion to extend time, but there is **no** such menu driven, template oriented option in the ESTTA system for filing a ***contested*** motion to extend time. Such a motion, whether filed using the ESTTA system or via mail, would have required

preparing a written motion and brief, together with a written supporting declaration, with both being in PDF form if filed electronically using ESTTA.

9. In the 15 April 2009 Board decision, there appears the statement, on page 4, lines 5-7, that “to the extent that this case involved a docketing error, we note that docketing errors and breakdowns do not constitute excusable neglect.” This language indicates the Board views this case as involving a docketing error, which is incorrect. This case does not involve a docketing error. There is no evidence of any “docketing error” in the record. Neither party asserted that there was any docketing error, either in papers relating to StonCor’s motion to re-open or in Les Pierres’ related motion to dismiss for failure to prosecute. None of the evidence adduced by either side shows, addresses, concerns or even mentions any docketing error.

10. Using our word processing equipment, I have scanned StonCor’s 30 January 2009 motion to re-open StonCor’s period for StonCor’s testimony-in-chief; the declaration that I signed and filed with that motion on 30 January 2009; StonCor’s 2 March 2009 reply to Les Pierres’ opposition to StonCor’s motion to re-open, the declaration that I signed and submitted on 2 March 2009 in support of that reply; and the declaration of Deanna McGregor that was also submitted in support of StonCor’s reply. Neither StonCor’s 30 January motion, nor StonCor’s 2 March reply, nor my declaration in support of StonCor’s 30 January motion, nor my declaration in support of StonCor’s 2 March reply, contain a single occurrence of either the word “docket” or the word “docketing”, nor is there any occurrence of any synonym of “docket” or “docketing”. In Ms. McGregor’s declaration, the word “docket” appears *once*, in paragraph 9 on page 4, in the context of her discussion regarding contacting a client as to whether a mark, which was the subject of intent to use trademark application serial number 78/568,858, was at that time



in use, such that a statement of use or a first request for an extension of time to file a statement of use was the appropriate paper to file.

11. Other than that single occurrence of the word “docket” in Ms. McGregor’s Declaration, in the course of discussion of a trademark application having no substantive relevance to the instant proceeding, there is **no** appearance or occurrence of the word “docket” nor the word “docketing,” nor any synonym for either of those two words, in any of StonCor’s papers submitted in connection with StonCor’s request to re-open its testimony period. Accordingly, StonCor has not at any time argued or contended that this case involves any docketing error.

12. Les Pierres does not contend that this is a case involving a docketing error. To the contrary, Les Pierres states that I and my staff were fully aware of the opening and closing of StonCor’s testimony period <sup>2</sup>.

13. I am well aware of *Pumpkin Ltd. V. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), and the numerous cases that have followed *Pumpkin*, holding that docketing errors do not amount to excusable neglect. This case is not about a docketing error. With the Board asserting that to the extent that this case involved the docketing error, the Board read into the record facts or something else for which there is no evidentiary support.

14. As respecting the time and effort involved to prepare and take an evidentiary deposition, where the client’s witness is giving the client’s testimony-in-chief, I have consulted my time records for two other trademark opposition proceedings now pending before this Board. In one of those, opposition number 91177161, my time records show that I spent 6.9 hours preparing to take the deposition of StonCor’s principal witness giving StonCor’s testimony-in-chief, and that the actual deposition took 5.3 hours.

15. In a second trademark opposition proceeding, number 91173583, my time records show that I spent 6.6 hours preparing for the deposition of StonCor's principal witness giving StonCor's testimony-in-chief, and that the actual deposition took 5.8 hours.

16. During the period for StonCor's testimony in this proceeding, it would have been impossible for me to devote those lengths of time, especially the time required in taking the deposition, which is an essentially continuous period of time. I simply could not stay awake, much less interrogate and defend a witness during his direct and cross-examination due to my illness.

17. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

18. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Date: 5/15/09

/CHARLES N. QUINN/  
CHARLES N. QUINN  
Attorney for Opposer  
Fox Rothschild LLP  
747 Constitution Drive, Suite 100  
Exton, PA., 19341-0673  
Tel: 610-4584984  
Fax: 610-458-7337  
email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

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<sup>2</sup> Page 2, lines 5-7; Les Pierres' Opposition to StonCor's Motion to Re-open

# Exhibit 1

to

**STONCOR'S MOTION FOR RECONSIDERATION OF THE PORTION OF THE  
BOARD'S 15 APRIL 2009 DECISION DENYING STONCOR'S MOTION TO REOPEN  
THE PERIOD FOR STONCOR'S TESTIMONY-IN-CHIEF**

Reference	Description of Document	Number of Pages	Date Filed
Exhibit C	Electronically filed Consented Motion to extend Answer & Discovery for StonCor Group, Inc. v Delaware Quarries, Opposition No.: 91182745	1	12/10/2008
Exhibit D	Electronically filed 1st extension of time for filing a Statement of Use for THINK BIG	3	12/17/2008
Exhibit E	Electronically filed Stipulated Motion to Extend <b>filed by Opposing Counsel</b> , Cytosport v Agropur, Opposition No.: 91182060	4	12/17/2008
Exhibit F	New trademark application, electronically filed, for FIRST CORNERSTONE BANK	6	12/22/2008
Exhibit G	New trademark application, electronically filed, for YOUR BANK OF CHOICE	6	12/22/2008
Exhibit H	Electronically filed 90 day extension of time to Oppose IRIDE (U.S. Trademark Application No.: 77/533,541)	1	12/23/2008
Exhibit I	Electronically filed 2nd extension of time for filing a Statement of Use for TOTAL ACCESS	3	12/24/2008
Exhibit J	Electronically filed 1st extension of time for filing a Statement of Use for S (Stylized)	3	12/24/2008
Exhibit K	New trademark application, electronically filed, for YOUR BANK OF CHOICE	6	12/29/2008
Exhibit L	New trademark application, electronically filed, for FIRST CORNERSTONE BANK	6	12/29/2008
Exhibit M	Electronically filed 90 day extension of time to Oppose RIDE (U.S. Trademark Application No.: 77/164,223)	1	12/29/2008
Exhibit N	Electronically filed 90 day extension of time to Oppose STONESKIN (U.S. Trademark Application No.: 77/531,420)	1	12/29/2008
Exhibit O	Electronically filed Statement of Use for STONTEC	5	12/29/2008
Exhibit P	Electronically filed 90 day extension of time to Oppose STONECOAT PROFILES on behalf of StonCor Group, Inc.	1	12/29/2008
Exhibit Q	Electronically filed transmittal of Reply Brief, StonCor v. Stonel; , Opposition No.: 91177161	18	1/7/2009
Exhibit R	Electronically filed Opposer Motion - Memorialization of Stipulation Respecting Timely Filing of StonCor's Reply Brief, Opposition No.: 91177161	7	1/8/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91181621
v.	:	
	:	Ser. No. 76/650,832
Les Pierres Stonedge Inc.,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

I, Charles N. Quinn, of full age, by way of certification, state that a copy of StonCor's Motion for Reconsideration of the Portion of the Board's 15 April 2009 Decision Denying StonCor's Motion To Reopen the Period for StonCor's Testimony-In-Chief and Declaration Of Charles N. Quinn in Support of StonCor's Motion for Reconsideration of the Portion of the Board's 15 April 2009 Decision Denying StonCor's Motion to Reopen the Period for StonCor's Testimony-In-Chief (with one Exhibit) was sent to applicant's counsel on the date set forth below via electronic mail and by first class mail, postage prepaid, addressed as follows:

James R. Menker, Esquire  
Holley & Menker, P.A.  
P.O. Box 331937  
Atlantic Beach, FL 32233  
jmenker@holleymenker.com, lgreer@holleymenker.com,  
[eastdocket@holleymenker.com](mailto:eastdocket@holleymenker.com)

Date: 15 May 2009

/CHARLES N. QUINN/  
Charles N. Quinn